

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

PLM-1
Roney

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FILE: B-202684

DATE: October 19, 1981

MATTER OF: Martin Wood - Relocation expenses - Closing costs paid by seller

DIGEST: Employee claims closing costs arising from purchase of home in Montgomery, Alabama, incident to transfer. Agency questions whether claim may be paid, since purchase agreement placed liability for closing costs on seller and settlement sheet shows that closing costs were paid from seller's funds. Employee argues that closing costs were included in sales price, but did not provide statement to that effect from seller. Since employee has not shown that both buyer and seller regard costs as having been paid by buyer, claim may not be allowed.

D. E. Cox, Authorized Certifying Officer, Federal Bureau of Investigation (FBI) requests our decision whether closing costs paid by the seller may be reimbursed to a transferred employee who purchased a house, where the seller has not provided a statement that the closing costs were included in the sales price of the house. Our holding in Philibert A. Ouellet, B-200257, August 18, 1981, is controlling, and the employee may not be reimbursed for the reasons set forth below.

Mr. Martin Wood, an employee of the FBI, claims reimbursement for \$1,833.50 of the closing costs paid by the seller of the residence that Mr. Woods purchased in Montgomery, Alabama, incident to his transfer to that city. The certifying officer questions whether the reimbursement is authorized in the absence of documentation to show that the closing costs were clearly separable from the purchase price and paid by the buyer. In particular, he notes that under the purchase agreement the seller is liable for closing costs and the settlement sheet indicates that the closing costs were paid from the seller's funds.

Mr. Wood has submitted a memorandum in support of his claim. He states that the settlement sheet does not reflect what actually happened. He notes that he obtained a Veterans Administration (VA) loan, and alleges that when a VA loan

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is involved the seller usually sets a higher price to cover the closing costs and the points the seller is required to pay. Finally, Mr. Wood argues that his claim complies with our decision B-174527, July 5, 1972, published at 52 Comp. Gen. 11 (1972). However, Mr. Wood's claim is distinguishable from that decision. There, the seller of the residence stipulated that the closing costs were included in the sales price of the house, which is not the case here.

The requirement that an employee submit documentation to show that both the buyer and the seller regarded the closing costs to have been paid by the purchaser was clarified and amplified in our decision Henry F. Holley, 56 Comp. Gen. 298 (1977). In a decision interpreting the Holley case, Philibert A. Ouellet, *supra*, this Office decided the precise question raised here. In that case, the buyer maintained that the seller factored the closing costs that the seller paid into the sales price. However, the seller refused to certify that the closing costs were included in the sales price, maintaining instead that the settlement sheet accurately reflected the transaction. The employee did not submit any direct evidence to overcome the seller's assertions. Therefore, we held that the employee had not satisfied the burden of proof incumbent upon claimants. See 4 C.F.R. § 31.7 (1981). In so holding we noted that the contract of sale imposed liability for the closing costs on the seller, and we specifically rejected the argument that the closing costs become just another pricing factor in the house.

Mr. Wood has also argued that he paid a higher price for his home because he obtained a VA loan, and that, if reimbursement is denied, he is being penalized because of the type of financing he used. The crucial element is not the type of financing, but, as stated above, whether both the buyer and the seller agree that the closing costs have been paid by the buyer. In the absence of such an agreement, reimbursement is not authorized no matter what type of financing is used.

Clearly, the Ouellet case is controlling in this situation. The arguments presented by Mr. Wood in support of his

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claim are similar to those made and rejected in the Ouellet decision. Since Mr. Wood has submitted neither a statement from the seller nor any other direct evidence to document his liability for the closing costs, reimbursement is not allowed.

for Milton J. Aroslan
Comptroller General
of the United States